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PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	09/395,106
		Filing Date	September 14, 1999
		First Named Inventor	Westhoff et al.
		Group Art Unit	3637
		Examiner Name	Tran A, Phi Dieu N
Total Number of Pages in This Submission	20	Attorney Docket Number	POL-PT010.1

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
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Remarks		

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Louis Weinstein Volpe and Koenig, P.C.	Reg. No. 20,477
Signature		
Date	January 13, 2003	

CERTIFICATE OF MAILING

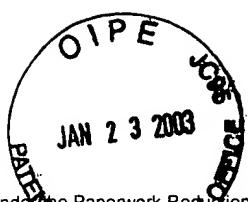
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PTO/SB/17 (01-03)

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FEE TRANSMITTAL for FY 2003

Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 160.00

Complete if Known

Application Number	09/395,106
Filing Date	September 14, 1999
First Named Inventor	Westhoff et al.
Examiner Name	Tran A, Phi Dieu N
Art Unit	3637
Attorney Docket No.	POL-PT010.1

METHOD OF PAYMENT (check all that apply)

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22-0493

Volpe and Koenig, P.C.

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$)		-0-	

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		-0-

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	160.00
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

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(Complete if applicable)

Name (Print/Type)	Louis Weinstein	Registration No. (Attorney/Agent)	20,477	Telephone	215-568-6400
Signature			Date	January 13, 2003	

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PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the **PATENT APPLICATION** of:

Westhoff et al.

Application No.: 09/395,106

Confirmation No.: 5428

Filed: September 14, 1999

For: MANHOLE INSERT FOR
MANUFACTURE OF A CAST MEMBER AND
TO PROVIDE A STEP INSERT HAVING
INCREASED STRUCTURAL AND HOLDING
STRENGTH

Group: 3637

Examiner: Tran A, Phi Dieu N

Our File: POL-PT010.1

Date: January 13, 2003

APPEAL BRIEF

Box AF
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Sir:

Further to the November 12, 2002 Notice of Appeal, Applicants hereby submit
this Appeal Brief.

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Applicant: Westhoff et al.
Application No.: 09/395,106

TABLE OF CONTENTS

ITEM	PAGE
(1) REAL PARTY IN INTEREST	3
(2) RELATED APPEALS AND INTERFERENCES	3
(3) STATUS OF CLAIMS	3
(4) STATUS OF THE AMENDMENTS	3
(5) SUMMARY OF THE INVENTION	4
(6) ISSUES	4
(7) GROUPING OF CLAIMS	5
(8) ARGUMENT	5-8
(9) CONCLUSION	9
APPENDIX A – Pending Claims	10-15

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Applicant: Westhoff et al.
Application No.: 09/395,106

(1) REAL PARTY IN INTEREST

The real party in interest is the assignee of record, POLY-TEC PRODUCTS, INC.

(2) RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to Applicant which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

(3) STATUS OF THE CLAIMS

The application contained claims 1-⁶45.

Claims 1-20, 27-29, 37-40 and 42-44 have been cancelled.

Claims 30-36 have been allowed.

Claims 21-26, 27 and 1 to ⁶45 have been rejected.

Claims 21-26, 41 and 45 have been appealed.

(4) STATUS OF THE AMENDMENTS

Applicant has filed an amendment after the Final Rejection canceling claims 27 and 42-44 and amending claim 41 and a supplemental amendment after the Final Rejection amending claims 21 and 41 and canceling claim 45. The amendment after Final has been entered.

(5) SUMMARY OF THE INVENTION

An insert 60' (Figs. 6, 7) has at flange 60f at one end lying in a plane diagonal to a longitudinal axis CL (Fig. 6) and flange 60d at another end lying in a plane perpendicular to the longitudinal axis CL. The diagonally aligned flange is capable of being aligned with an opening 50b in a mold member 50 to prevent cast material from seeping out of the mold assembly. Either end of the insert may have a diagonally aligned flange as shown by Figures 7 and 8. A pin 54 (Fig. 7) may be used for insertion of the insert. See specification page 20, line 19 to page 22, line 19.

(6) ISSUES

- A. Are claims 21, 26 and 41-44 patentable over Brooks under section 102(b).
- B. Are claims 21-26, 45 and 46 unpatentable over Brooks in view of Summerlin et al. under Section 103(a).
- C. Is claim 27 patentable over Ditcher 3974615, in view of Peacock and Sawdon (6200059).

(7) GROUPING OF CLAIMS

Claims 21-26 may be grouped together.

Claims 41-45 may be grouped together.

Claim 27 is not grouped with claims 21-26 or claims 41-45

(8) ARGUMENT

Claims 21-26 and 41-44 have been rejected under 35 U.S.C. §102(b) as anticipated by Brooks. This rejection is respectfully traversed.

Claim 21 recites "one of the open end and a closed end having a flange lying in a plane diagonally aligned with a longitudinal axis of said housing." Support for this language can be found, for example, in the specification at page 24, lines 16-19.

The definition of the word "plane" is found in Webster's Third New International Dictionary, which recites a plane as "a surface such that the straight line that joins any two of its points lies wholly in that surface: A two-dimensional extent of zero curvature: A surface any intersection of which by a like surface is a straight line. Definition "b" states "a flat or level material surface < an incline ~ >".

Making reference to Brooks there is taught therein a flange 2 shown in both Figs. 1 and 2, which, in the right-hand column of the specification at lines 64-66 the "flanged inner end of the socket" is described as "frusto - conical and of considerable diameter". It is clear from the description of flange 2 of Brooks that the frusto - conical flange 2 clearly does not lie in a plane since it is a conical surface.

The Brooks' socket is used in a different application from that of the present invention. Figs. 1 and 2 show that the Brooks' socket is mounted to a concrete form by

Applicant: Westhoff et al.
Application No.: 09/395,106

the use of nails or other fastening means to secure the socket to a form which, it should be noted, has *no opening*. The concrete is then poured into the form.

The present invention, and specifically the embodiment shown in Fig. 7 has a diagonally aligned flange 60f which serves to cover an opening in a curved, inner mold member 50 to protect cast material from seeping through the opening. Similarly, in the embodiment shown in Fig. 8 the diagonally aligned flange 60d' substantially covers an opening 56b in a curved mold member 56 to prevent seepage of cast material from the mold assembly through the opening.

Brooks fails to recognize the problem recognized by the present invention and thus fails to teach a solution for this problem. The frusto - conical flange 2 of Brooks has the function of affording "ample anchorage to the socket, thus resisting withdrawal or displacement from or in the concrete mass." See the specification of Brooks, right-hand column, lines 66-68. The flange 2 is embedded in the cast material. Neither of the flanges 2 or 6 are employed to seal an opening. Flange 6 is secured to a mold member (unnumbered) by nails (also unnumbered).

In view of the foregoing comments it is submitted that claim 21 patentably distinguishes over Brooks and reconsideration and allowance of claim 21 is earnestly solicited.

Applicant: Westhoff et al.
Application No.: 09/395,106

Claim 41, as amended to include the limitations of claim 44 is also deemed to patentably distinguish over Brooks.

Claims 22-26 and 45 all depend from claim 21 or from a claim which depends from claim 21 and hence are deemed to patentably distinguish over Brooks for the same reasons set forth hereinabove.

Claims 21-26, 45 and 46 have been rejected under 35 U.S.C. §103(a) is unpatentable over Brooks in view of Summerlin et al. This rejection is respectfully traversed. Brooks, as was pointed out hereinabove, fails to teach or even remotely suggest a flange which lies in a plane diagonally aligned relative to the longitudinal axis of the insert.

Summerlin is relied upon as teaching internal projections having a tapering cross section as defined by a first surface diagonally aligned with the longitudinal axis and facing an open end and a second surface perpendicular to said longitudinal axis and facing another end. Summerlin teaches a socket 11 having an enlarged head 15 and lined with a *deformable* inner liner 14 and thus fails to teach an insert which has a housing whose interior surface is provided with projections as opposed to being provided with a deformable liner, which will generally assume the configuration of the member pressed into the deformable liner, Summerlin is also lacking in the teachings not found in Brooks, namely a lack of teaching of a flange lying in a plane which is

Applicant: Westhoff et al.
Application No.: 09/395,106

diagonally aligned to a longitudinal axis of the insert and in view thereof, it is submitted that Summerlin fails to provide the teaching lacking in Brooks and that claims 21-26, 45 and 46 patentably distinguish thereover.

Claim 27 has been rejected under 35 U.S.C. §103(a) as unpatentable over Ditcher '615 in view of Peacock and Sawdon (patent '059). In view of the fact that claim 27 has been canceled without prejudice to applicant it is submitted that this rejection is now moot.

Applicant: Westhoff et al.
Application No.: 09/395,106

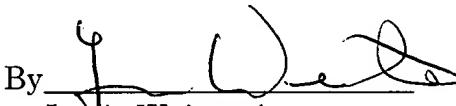
(9) CONCLUSION

Claims 21-26 and 41 are patentable over Brooks for the reasons set forth above.

Claims 21-26, and 45 are patentable over Brooks in view of Summerlin for the reasons set forth above.

Respectfully submitted,

Westhoff et al.

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LW/bbf
Attachment

APPENDIX A

(PENDING CLAIMS OF U.S. PATENT APPLICATION NO. 09/395,106)

21. (Three times Amended) An insert adapted to be embedded in a cast member for force-fittingly receiving a leg portion of a step, said insert being comprised of:

a hollow, substantially cylindrical-shaped elongated housing having an open end and a closed end;

one of the open end and the closed end having a flange lying in a plane diagonally aligned with a longitudinal axis of said housing;

another one of the open end and the closed end having a flange lying in a plane perpendicular to said longitudinal axis;

an interior surface of said housing having a portion thereof being provided with a plurality of projections arranged at spaced intervals and extending radially inward;

each of the plurality of projections having a tapering cross-section defined by a first surface diagonally aligned with the longitudinal axis and facing the open end and a second surface perpendicular to said longitudinal axis and facing the closed end.

22. The insert of claim 21, further comprising a plurality of ears integrally joined at the open end of said housing and projecting away from the housing;

said ears being adapted to flex when a force is applied thereto; each ear having a hooked-shaped configuration and cooperating with a flange adjacent said open end to embrace a marginal portion surrounding an opening in a support member for retaining the insert on the support member.

23. (Amended) The insert of claim 22 wherein said flange at said open end covers said opening to prevent seepage therethrough.

24. (Amended) The insert of claim 21 wherein said housing is provided with a second plurality of flanges extending radially outwardly from said housing and spaced along the housing for retaining the insert in place when embedded in a cast member.

25. (Thrice Amended) The insert of claim 21 wherein said closed end has a flange extending radially outward therefrom to seal an opening in a mold core preparatory to insertion of the insert into a cast material.

26. The insert of claim 21 wherein a portion of said housing adjacent to said closed end and said closed end has a thickness which is chosen to provide additional

structural strength to withstand forces encountered by said insert when injected into a cast material and also to regulate cycle time.

30. An insert assembly adapted to be embedded in a cast member for force-fittingly receiving a leg portion of a step, said insert assembly being comprised of:
first and second members adapted to be telescopingly mounted to one another;
said first member being a hollow, substantially cylindrical-shaped elongated housing having first and second open ends and an integral annular flange intermediate said first and second ends, said flange being diagonally aligned to a longitudinal axis of said first member;
said first member being slotted on opposite sides of said flange to enable said member to yield and flex when pressed inwardly;
said second member being a hollow, substantially cylindrical-shaped elongated housing having a first closed end and a second open end;
said open end of said second member being telescopingly mounted upon one end of said first member, whereby the second member forces the end of the first member inserted into the open end of said second member to flex inwardly, to provide a snug force-fit therebetween.

31. The insert assembly of claim 30 wherein said second member is provided with a plurality of outwardly extending integral flanges arranged at spaced intervals therealong to enhance embedment of the second member in a cast member.

32. The insert assembly of claim 30 wherein the closed end of said second member is provided with an annular flange lying in a plane diagonally aligned with a longitudinal axis of said second member.

33. The insert assembly of claim 30 wherein an interior surface of said second member has a portion thereof being provided with a plurality of annular projections extending radially inward; and

each projection having tapering cross-section defined by a first surface diagonally aligned with and longitudinal axis and facing the open end and a second surface perpendicular to said closed end.

34. The insert assembly of claim 30 wherein said first member is provided with score areas adjacent one side of said diagonally-aligned flange to facilitate breaking away of the first member from said second member.

35. The insert assembly of claim 30 wherein said first member is provided with a plurality of outwardly directed annular flanges for gripping an interior surface of said second member, the surfaces of said flanges being inclined so that it requires less force to telescopingly mount the second member onto the first member than is required to pull the first and second members apart.

36. The insert assembly of claim 30 wherein said second member is provided with an inwardly directed helical annular flange for gripping an exterior surface of said first member, the surface of said helical flange being inclined so that it requires less force to telescopingly mount the second member onto the first member than is required to pull the first and second members apart, said helical annular flange also serving to form a snug press-fit with a leg of a step member insertable therein.

41. (Amended) An insert which is embedded in a cast member for force-fittingly receiving a leg portion of a step, said insert being comprised of:
a hollow, substantially cylindrical-shaped, elongated housing having a generally smooth cylindrical outer surface and having an open end and a closed end;
one of said ends having a flange lying in a plane perpendicular to a longitudinal axis of said housing; and

Applicant: Westhoff et al.
Application No.: 09/395,106

an interior surface of said housing having a portion thereof provided with a plurality of annular inwardly projecting spaced apart projections; and
said closed end having an exterior surface with at least a portion of the exterior surface lying in a plane being inclined relative to said longitudinal axis.

45. The insert of claim 22 wherein said flange at said closed end covers said opening to prevent seepage therethrough.